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THURMAN & SUTHERLAND 1886
THURMAN, SUTHERLAND & KING 1888
THURMAN, WEDGWOOD & IRVINE 1906
IRVINE, SKEEN & THURMAN 1923
SKEEN, THURMAN, WORSLEY & SNOW 1952
WORSLEY, SNOW & CHRISTENSEN 1967

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June 21, 1989

WRITER'S DIRECT NUMBER:

322-9156

RECEIVED

JUN 22 1989

ATTORNEY GENERAL
NATIONAL RESOURCE AGENCY

John W. Anderson, Esq.
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Salt Lake City, Utah 84101

Re: Lower Gunlock Reservoir Corporation - Ivins
Irrigation Company

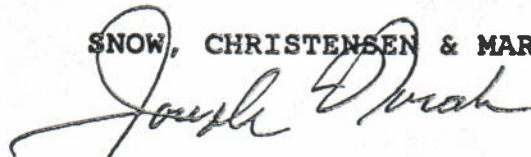
Dear-John:

Pursuant to our telephone conversation, enclosed is a copy of the final Water Exchange Agreement executed by the parties on June 6, 1989. It is my understanding that you will prepare the necessary stipulations, motions and orders of dismissal for both Civil Nos. 86-0901 and 87-1493, following the same form of the drafts which you previously forwarded to me.

I trust that the foregoing will meet with your approval. If you have any questions thereon, please advise.

Very truly yours,

SNOW, CHRISTENSEN & MARTINEAU



Joseph Novak, Of Counsel

JN:dwb

Enclosure

cc: Lower Gunlock Reservoir
Corporation (w/o encl.)
Wayne M. McArthur (w/o encl.)
Michael J. Quealy, Esq. (w/encl.)

WATER EXCHANGE AGREEMENT

This Agreement made and entered into this 14th day of June, 1989, between Lower Gunlock Reservoir Corporation, a Utah non-profit corporation with its principal place of business in Washington County, State of Utah, and Ivins Irrigation Company, a Utah non-profit corporation with its principal place of business in Washington County, State of Utah.

W I T N E S S E T H :

WHEREAS, Lower Gunlock Reservoir Corporation is the owner of Right No. 81-1101 (Cert. No. 10013), covering the storage of 15,300 acre-feet (AF) of water of the Santa Clara River annually in the Lower Gunlock Reservoir; and

WHEREAS, the following member companies of Lower Gunlock Reservoir Corporation are owners of primary rights to the use of the waters of Santa Clara River, as confirmed by the respective Awards under the Santa Clara River Decree dated April 3, 1922, as corrected by the Supplemental Decree dated February 28, 1929, to wit: Bloomington Canal Company - Award No. 1 for 3.28 cfs; Santa Clara Seep Ditch Company - Award No. 2 for 3.98 cfs; St. George-Santa Clara Field Canal Company - Award No. 3 for 13.33 cfs, as amended by Right No. 81-1148 (Cert. No. a-868) for storage in Lower Gunlock Reservoir; and New Santa Clara Field Canal Company - Award No. 4 for 8.70 cfs, as amended by Right No. 81-1149 (Cert. No. a-869) for storage in Lower Gunlock Reservoir; and

WHEREAS, Ivins Irrigation Company is the owner of Right No. 81-77 (Cert. No. 3639) covering the storage of 1,000 AF of water

of Santa Clara River annually in Ivins Reservoir and Right No. 81-7 (Cert. No. 2139) for 14.9 cfs of water of Santa Clara River by direct flow; and

WHEREAS, there are pending, in the District Court of Washington County, two separate actions between the parties hereto relating to the storage capacity of the Lower Gunlock Reservoir and the storage of water therein, entitled Ivins Irrigation Company, et al. v. Lower Gunlock Reservoir Corporation, being Civil No. 86-0901, and Ivins Irrigation Company, et al. v. Lower Gunlock Reservoir Corporation, et al., being Civil No. 87-1493; and

WHEREAS, the parties hereto desire to settle all issues in Civil Nos. 86-0901 and 87-1493 by entering into this Agreement which shall govern the storage and release of water by exchange from the Lower Gunlock Reservoir Corporation and situate on the Santa Clara River in Washington County, Utah and the storage and release of water by exchange from the Ivins Reservoir owned by Ivins Irrigation Company situate off-stream from the Santa Clara River in Washington County, Utah.

NOW, THEREFORE, it is understood and agreed between the parties hereto as follows:

1. The storage of water in the Lower Gunlock Reservoir shall be under and pursuant to the water rights of the Lower Gunlock Reservoir Corporation and its member companies and Ivins Irrigation Company shall have no right to store water in the Lower Gunlock Reservoir under or pursuant to the water rights of

Ivins Irrigation Company. The storage of water in the Ivins Reservoir shall be under and pursuant to the water rights of Ivins Irrigation Company and Lower Gunlock Reservoir Corporation or its member companies shall have no right to store water in the Ivins Reservoir under or pursuant to the water rights of Lower Gunlock Reservoir Corporation or its member companies.

2. The storage of the waters of the Santa Clara River in the Lower Gunlock Reservoir shall be stored by Lower Gunlock Reservoir Corporation under Right Nos. 81-1101 (Cert. No. 10018), 81-1148 (Cert. No. a-868) and 81-1149 (Cert. No. a-869). Of the waters so stored, Lower Gunlock Reservoir Corporation shall, by exchange, make available to Ivins Irrigation Company in the Lower Gunlock Reservoir, the equivalent quantity of water not to exceed 1,000 AF annually which otherwise would be available for storage in Ivins Reservoir under Right No. 81-77 (Cert. No. 3689); subject to the following limitations which shall be determined each year by the Santa Clara River Water Commissioner:

(a) The first 500 AF, or so much thereof as would be available for storage under Right No. 81-77 (Cert. No. 3689) without regard to the capacity of the feeder canal of Ivins Irrigation Company from the Santa Clara River to Ivins Reservoir; and

(b) The next 500 AF, or so much thereof as would be available for storage under Right No. 81-77 (Cert. No. 3689), but limited to a storage rate equal to the capacity

of the feeder canal of Ivins Irrigation Company from the Santa Clara River to Ivins Reservoir.

(c) It is understood by both parties that all waters in the Santa Clara River will be managed by the Santa Clara River Commissioner under the direction of the State Engineer.

Provided, however, that the waters in storage in the Lower Gunlock Reservoir to be made available to Ivins Irrigation Company, shall not exceed 500 AF in storage at any one time and shall bear its pro rata share of the Reservoir losses while in storage. The storage waters so made available to Ivins Irrigation Company, as adjusted for Reservoir losses, shall be released from the Lower Gunlock Reservoir under the direction of the Santa Clara River Water Commissioner at the call of and for the use by Ivins Irrigation Company for irrigation and stockwatering purposes and shall not be carried over from one year to the next.

3. The storage of the waters of Santa Clara River in the Ivins Reservoir shall be stored by Ivins Irrigation Company under Right No. 81-77 (Cert. No. 3689). For purposes of this Paragraph 3 only, Right No. 81-77 (Cert. No. 3689) shall be subordinated to Right Nos. 81-1101 (Cert. No. 10018), 81-1148 (Cert. No. a-868) and 81-1149 (Cert. No. a-869). All of the water so stored in Ivins Reservoir without regard to the quantity thereof, shall be made available to Lower Gunlock Reservoir Corporation and its member companies in exchange for the quantities of water made

available to Ivins Irrigation Company in Lower Gunlock Reservoir pursuant to Paragraph 2 hereinabove. The storage waters so made available to Lower Gunlock Reservoir Corporation and its member companies shall be released from the Ivins Reservoir under the direction of the Santa Clara River Water Commissioner at the call of and for the use by Lower Gunlock Reservoir Corporation and its member companies for irrigation and stockwatering purposes. Provided, however, that the quantity of water remaining in Ivins Reservoir on October 1 of each year shall not exceed one-half (1/2) of the capacity of Ivins Reservoir.

4. Ivins Irrigation Company shall pay to Lower Gunlock Reservoir Corporation for the storage waters made available to Ivins Irrigation Company by exchange pursuant to Paragraph 2b hereinabove at a rate per AF equal to two (2) times the rate per AF charged by Lower Gunlock Reservoir Corporation to its member companies for the Lower Gunlock Reservoir storage waters delivered to those member companies, respectively. Payment shall be made by Ivins Irrigation Company on or before July 1 of each year for all quantities of water made available to Ivins Irrigation Company during the preceding calendar year pursuant to Paragraph 2 hereinabove.

5. Ivins Irrigation Company shall, at its sole cost and expense, operate and maintain the Ivins Reservoir and its feeder canal and shall hold harmless and indemnify Lower Gunlock Reservoir Corporation and its member companies from any and all

claims and damages which relate to or result from the operation and maintenance thereof.

6. Lower Gunlock Reservoir Corporation shall, at its sole cost and expense, (except for the payments provided for under Paragraph 4 hereinabove) operate and maintain the Lower Gunlock Reservoir and shall hold harmless and indemnify Ivins Irrigation Company from any and all claims and damages which relate to or result from the operation and maintenance thereof.

7. Notwithstanding any other provision of this Agreement, the operation, maintenance and stabilization of the Lower Gunlock Reservoir shall at all times be subject to that certain Amended Contract dated June 10, 1981, between Lower Gunlock Reservoir Corporation and Utah Division of Wildlife Resources.

8. This Agreement provides for an exchange water only and shall not be construed as modifying or changing the water rights of the parties hereto or granting to Ivins Irrigation Company any storage rights in the Lower Gunlock Reservoir or granting to Lower Gunlock Reservoir Corporation and its member companies any storage rights in the Ivins Reservoir. This Agreement shall remain in force and effect for only as long as the exchange of the waters covered hereby is made in accordance with the provisions hereof and the uses of the waters covered hereby continues for irrigation and stockwatering purposes. In the event of a change in the use of such waters to other uses, this Agreement may be terminated by either party on one year's written notice.

9. The two separate actions between the parties hereto pending in the District Court of Washington County, Utah, entitled Ivins Irrigation Company, et al. v. Lower Gunlock Reservoir Corporation, being Civil No. 86-0901, and Ivins Irrigation Company, et al. v. Lower Gunlock Reservoir Corporation, et al., being Civil No. 87-1493, shall be dismissed with prejudice so long as this Agreement remains in place but without prejudice should Lower Gunlock Reservoir Corporation elect to terminate this Agreement.

10. This Agreement contains the complete and entire agreement between the parties hereto and supersedes all prior agreements, representations, conversations and understandings of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this date first above written.

ATTEST:

LOWER GUNLOCK RESERVOIR CORPORATION

By Tom Mitta

By Reynolds

Its: Secretary

Its: President

ATTEST:

IVINS IRRIGATION COMPANY

By Dean G. Burt

By Ray Case

Its: Secretary

Its: President